

Fifteen Important Decisions of Wisconsin Supreme Court

Evan A. Evans

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Evan A. Evans, *Fifteen Important Decisions of Wisconsin Supreme Court*, 23 Marq. L. Rev. 71 (1939).
Available at: <http://scholarship.law.marquette.edu/mulr/vol23/iss2/3>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

FIFTEEN IMPORTANT DECISIONS OF THE WISCONSIN SUPREME COURT

EVAN A. EVANS

THE past three decades in our national history have, as never before, centered attention on the personnel of the United States Supreme Court and the decisions of that Court in cases of epoch-making importance. There has been a growing realization that judicial decisions have been far more determinative of the Nation's history than journalists and historians have ascribed to them. While this influence may be over-stressed by lawyers, it has been inadequately appreciated by the general public.

A dispassionate study of causes and effects of judicial decisions in the momentous struggles in our history leads us at once to the decisions in the Dred Scott and Legal Tender cases. Their influence on our Nation's history no one can deny. Close on their heels in importance are a dozen others dealing with taxation, commerce, industry, and finance.

Equally important and causative are the leading decisions of the Supreme Courts of the several states.

A troublesome question, however, confronts me at the threshold of this dissertation. It has a two-fold aspect, arising out of the inevitable question of causal relation. Are the momentous judicial decisions the culmination of economic struggles in the Nation or in the Commonwealth? Or do the great political and economical changes emanate from the judicial decisions?

Like many a case involving the determination of a commingled issue of fact and conclusions where answers are sought through a special verdict, the answers may well turn on the care exercised in selecting the jury. If lawyers made up the jury, the verdict would possibly differ from that which a lay jury would render. Perhaps the most accurate verdict would be the usual one—a compromise. A disagreement is likewise not improbable—nor irrational.

Doubtless, the failure of the historian and the journalist to appreciate or truly appraise the influence of the judicial decisions on the history of a nation or a commonwealth is traceable largely to the fact that judicial decisions are seldom revolutionary. The rule of *stare decisis* is so strong that we seldom find radical departures from judicial trends. Good lawyers forecast decisions with accuracy, except when said lawyers wear political glasses which color and blur their views.

The decision of *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 Sup. Ct. 578, 81 L.ed. 703 (1937), was startling because it reversed

a series of decisions previously announced by the Supreme Court in the last quarter of a century. In the completeness of reversal of that court's previous rulings, this case is almost unparalleled. Its startling effect lay in the fact that in the 19,000 decisions announced by the United States Supreme Court, only one *Erie Railroad v. Thompkins*, 304 U.S. 64, 38 Sup. Ct. 817, 82 L.ed. 1188 (1938), may be found comparable in the totality of its change of front.

The Supreme Courts of the states and Nation are not and never have been sensational. They are not ordinarily fonts of publicity news. When exception exists, it is because of the wide-spread, signal interest in the case, not the spectacularity of the court action that engenders the interest. Likewise, the practice of deciding only what is necessary to the determination of the case at issue avoids opinions of startling departures from well-established judicial holdings.

There is a group of decisions of the Wisconsin Supreme Court which reflects the more exciting struggles in Wisconsin history, a discussion of which should be of consuming interest to all Wisconsin people. They are not necessarily epochal in the pronouncement or determination of great legal questions. Their importance lies in the facts and the factual issues which at the respective times stirred Wisconsin citizenry to the boiling point.

In the conviction that a study of these cases would be productive of a better knowledge and understanding of the state's history and of the part the Wisconsin Supreme Court, everywhere recognized for its independence, its liberality, and for its freedom from political bias, has played in writing that history, I concluded to make a selection of the fifteen most important, famous cases decided by the Wisconsin Supreme Court since its creation. They were to be cases which settled important, and at times momentous questions of great public interest. I use the word "settled" with a broader connotation. The decisions I have in mind either concluded the controversies or became the basis of a settlement by the citizenry of the state. Sometimes the decisions led to legislative enactments, sometimes to constitutional amendments,

It is, of course, apparent that a plurality of minds could more impartially and accurately select the fifteen important, famous cases than could one lawyer. I therefore asked members of the Bench and the Bar of Wisconsin to give me the benefit of their reflections and selections. A referendum, as it were, was invoked.

I now wish to express my appreciation of the assistance rendered. It involved effort and careful thought on their part. Some have written persuasive briefs in support of their choices. Several have gratified me by telling of the pleasure which the study gave them.

I am pleased with the unanimity of their selections. Perhaps half of the cases were on sixty per cent of the lists. No one, however, has submitted a perfect list, that is, a list which is in complete accord with the fifteen cases which received the greatest recognition in the referendum.

I hope, if my time ever permits me to do so, to write the story of each one of the fifteen cases, giving the historical background and a brief account of the various characters who played the leading (and minor) roles in the drama (or tragedy) which furnished the background for the conflict that led to the heated litigation which terminated in these decisions. That is, however, work for tomorrow, or perhaps tomorrow's tomorrow.

The following is a list of the fifteen cases in the order of the Bar's preference:

1. *Ableman v. Booth*, 11 Wis. 498 (1859) and other Booth cases, 3 Wis. 1 (1854); 3 Wis. 105 (1854); 3 Wis. 157 (1854).
2. *Borgnis v. Falk*, 147 Wis. 327, 133 N.W. 209 (1911).
3. *Attorney General v. Railroad Cos.*, 35 Wis. 425 (1874).
4. *Attorney General, ex rel. Bashford v. Barstow*, 4 Wis. 567 (1855).
5. *Nunnenmacher v. State*, 129 Wis. 190, 108 N.W. 627 (1906).
6. *Income Tax Cases*, 148 Wis. 456, 134 N.W. 673 (1912).
7. *Water Power Cases*, 148 Wis. 124, 134 N.W. 330 (1912).
8. *Ekern v. McGovern*, 154 Wis. 157, 142 N.W. 595 (1913).
9. *LaFollette v. Kohler*, 200 Wis. 518, 228 N.W. 895 (1930).
10. *Cannon Cases*, 196 Wis. 534, 221 N.W. 603 (1928); 206 Wis. 374, 240 N.W. 441 (1932); 218 Wis. 302, 260 N.W. 486 (1935).
11. *State v. McFetridge*, 84 Wis. 473, 54 N.W. 1 (1893).
12. *In re Nicholas Kemp*, 16 Wis. 382 (1863).
13. *Apportionment Cases, State ex rel. Atty. Gen. v. Cunningham*, 81 Wis. 440, 51 N.W. 724 (1892); *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 53 N.W. 35 (1892).
14. *American Furniture Co. v. I. B. of T. C. & H. of A.*, 222 Wis. 338, 268 N.W. 250 (1936).
15. *State ex rel. Wisconsin Development Authority v. Damman*, 228 Wis. 147, 277 N.W. 278 (1938).

The next ten cases in the order of their popularity are:

1. *State ex rel. Weiss et al. v. Dist. Board*, 76 Wis. 177, 44 N.W. 967 (1890).
2. *Chicago & N. W. Ry. Co. v. The State*, 128 Wis. 553, 108 N.W. 557 (1906).

3. State ex rel. Owen v. McDonald, 160 Wis. 21, 151 N.W. 331 (1915).
4. State ex rel. Cook v. Houser, 122 Wis. 534, 100 N.W. 964 (1904).
5. Cornell v. Hickens, 11 Wis. 353 (1860) and corresponding cases, Clark v. Farrington, 11 Wis. 306 (1860); and Blunt v. Walker, 11 Wis. 334 (1860).
6. Mil. St. P. & S. S. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N.W. 905 (1908).
7. State ex rel. Rodd v. Verage, 177 Wis. 295, 187 N.W. 830 (1922).
8. Harrigan v. Gilchrist, 121 Wis. 127, 99 N.W. 909 (1904).
9. State ex rel. Van Alstyne v. Frear, 142 Wis. 420, 125 N.W. 984 (1910).
10. State ex rel. Drake v. Doyle, Sec. of State, 40 Wis. 175 (1876).

MARQUETTE LAW REVIEW

FEBRUARY, 1939

VOLUME XXIII

MILWAUKEE, WISCONSIN

NUMBER TWO

STUDENT EDITORIAL BOARD

KEARNEY W. HEMP, *Editor*

GEORGE A. EGGERS, *Note Editor*

DANIEL C. SHEA, *Recent Decision Editor*

WILLIAM R. CURRAN
FRANK DE LORENZO
GERARD A. DESMOND
JOHN B. FRISCH
HERMAN J. GLINSKI
JAMES F. HACKETT
STEPHEN J. HAJDUCH
JUNE C. HEALY
RUTH E. JOHNSON
ROBERT D. JONES
JOHN D. KAISER
WILLIAM P. KINGSTON
JOHN C. KLECZKA, JR.

EDMUND J. KRZYKOWSKI
CARL A. LUTHER
EDWARD J. MARTIN
EDMUND R. MIETUS
CHESTER J. NIEBLER
CHARLES D. O'BRIEN
ALLEN L. O'DONELL, JR.
ROY C. PACKLER
JOHN H. RUSSELL
EDWARD J. SETLOCK
WALTER J. STEININGER
WILLIAM E. TAAY
EDWARD F. ZAPPEN

BUSINESS STAFF

MELVIN M. BIEHL, *Business Manager*

SYDNEY M. EISENBERG, *Advertising Manager*

JOHN D. FARNSWORTH, *Circulation Manager*

CONTRIBUTORS TO THIS ISSUE

ROBERT S. MOSS is a member of the Wisconsin bar. He is a graduate of the University of Wisconsin Law School.

L. L. RIESELBACH is a member of the Wisconsin bar. He is a graduate of the University of Wisconsin Law School.

EVAN A. EVANS has been judge of the Federal Circuit Court of Appeals for the 7th Circuit since 1916. He is a graduate of the University of Wisconsin, and holds an honorary LL.D. degree from that university.

Unless the LAW REVIEW receives notice to the effect that a subscriber wishes his subscription discontinued, it is assumed that a continuation is desired.

An earnest attempt is made to print only authoritative matter. The articles and comments, whenever possible, are accompanied by the name or initials of the writer; the Editorial Board assumes no responsibility for statements appearing in the REVIEW.

Published December, February, April and June by the faculty and students of Marquette University School of Law. \$2.00 per annum. 60 cents per current number.